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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 PETER CHARLES GNEHM,

9 Plaintiff,

10 v.

11 VICKIE I. CHURCHILL, GREGORY M.
BANKS, DON MASON,

12 Defendants.

CASE NO. 2:18-cv-00925-BAT

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

13 Defendants Vickie Churchill, Gregory Banks, and Don Mason move for summary
14 judgment dismissal of the claims of Peter Gnehm on the grounds that the claims are barred by
15 the statute of limitations. Dkt. 25. In his 42 U.S.C. § 1983 complaint filed in June of 2018, Mr.
16 Gnehm alleges that Defendants used their positions within the Island County government and
17 court system to deprive him of his constitutional rights in several civil and criminal actions in
18 which Mr. Gnehm was a party. Dkt. 4. Vickie Churchill is an elected superior court judge;
19 Gregory Banks is the County's elected Prosecuting Attorney; and Don Mason is the County
20 Administrator who oversees the County's public defense program.

21 Mr. Gnehm alleges that the conduct supporting his claims occurred between 1997 and
22 2008. Dkt. 4-2, p. 6. Mr. Gnehm does not contest that his claims against Defendants are § 1983
23

1 claims or that his claims are subject to Washington's three year statute of limitations for personal
2 injury torts. Dkt. 27, p. 1; Dkt. 28, p. 1.

3 The Court finds that Mr. Gnehm brought his § 1983 claims seven years after the
4 limitations period expired and therefore, his claims are barred by the statute of limitations.

5 **RELEVANT FACTS**

6 In March 1997, Caroline Morse filed a petition for dissolution of her marriage with Peter
7 Gnehm in Island County Superior Court. Dkt. 26, Fobes Decl., Ex. A. The court entered a decree
8 of dissolution in July 1997. *Id.*, Fobes Decl., Ex. B.

9 On November 13, 1998, Ms. Morse filed her first petition for order of protection, seeking
10 to prohibit Mr. Gnehm from contacting her and their daughter, Bonnie Gnehm. Dkt. 26, Fobes
11 Decl., Ex. C. On November 30, 1998, the court entered an order of protection ("1998 Order").
12 *Id.*, Fobes Decl., Ex. D. The 1998 Order prohibited Mr. Gnehm from contacting Ms. Morse or
13 Bonnie or coming within 100 feet of Ms. Morse's place of employment or residence, or within
14 100 feet of Bonnie's school or daycare. *Id.*, Fobes Decl., Ex. D.) Ms. Morse renewed the 1998
15 Order in October 2000 and April 2001. *Id.*, Fobes Decl., Exs. E, G.)

16 Mr. Gnehm violated the 1998 Order in March 2001 (by sending correspondence to Ms.
17 Morse) and in February 2001 (by calling Ms. Morse at her home). Dkt. 26, Fobes Decl., Ex. F.
18 As a result, the Island County Sheriff cited Mr. Gnehm for violating RCW 26.50.110. Dkt. 26,
19 Fobes Decl., Ex. F. Ms. Morse filed a new petition for order of protection in April 2002. *Id.*,
20 Fobes Decl., Ex. H. On May 13, 2002, a county commissioner entered an order of protection
21 ("2002 Order") containing the same terms as the 1998 Order. *Id.*, Fobes Decl., Ex. I. And on
22 May 1, 2003, Judge Churchill renewed the 2002 Order and made it permanent. *Id.*, Fobes Decl.,
23 Ex. J.

1 A month later, on June 6, 2003, the Sheriff arrested Mr. Gnehm for violating the 2002
2 Order after Mr. Gnehm came within 100 feet of Ms. Morse's place of employment. Dkt. 26,
3 Fobes Decl., Ex. K. Because Mr. Gnehm had violated protective orders entered for Ms. Morse's
4 protection on at least two previous occasions, the Island County Prosecuting Attorney's Office
5 charged Mr. Gnehm with a felony under RCW 26.50.110. *Id.*, Fobes Decl., Ex. L. Mr. Gnehm,
6 who was represented by counsel, pleaded guilty. *Id.*, Fobes Decl., Ex. M.

7 Because there was a potential conflict of interest created by Ms. Morse's employment in
8 the Island County Prosecuting Attorney's Office, the Skagit County Prosecutor's Office handled
9 all plea negotiations, and Mr. Gnehm explicitly acknowledged that precaution by entering a
10 Limited Waiver of Objection Relating to Conflict. Dkt. 26, Fobes Decl., Ex. N. As part of his
11 plea agreement, Mr. Gnehm was sentenced to 24 months of community supervision and a jail
12 term of 365 days, with 355 days suspended for 24 months subject to a number of conditions. *Id.*,
13 Fobes Decl., Ex. O.

14 Four years later, on September 10, 2007, Mr. Gnehm again violated the 2002 Order by
15 coming to Ms. Morse's place of employment. Dkt. 26, Fobes Decl., Ex. P. Because Ms. Morse
16 still worked for the Island County Prosecuting Attorney's Office, the Skagit County Prosecuting
17 Attorney's Office again handled all plea negotiations with Mr. Gnehm. *Id.*, Fobes Decl., Exs. Q,
18 R. On December 18, 2007, Mr. Gnehm, represented by counsel, pleaded guilty to another felony
19 violation of RCW 26.50.110 and was sentenced to a jail term of 365 days, with 345 days
20 suspended for 24 months subject to a number of conditions. *Id.*, Fobes Decl., Exs. S, T.

21 On June 22, 2018, Mr. Gnehm filed his complaint against Defendants. Dkt. 4. In his
22 complaint, and the assorted documents he has filed with the Court, Mr. Gnehm claims that
23 Defendants wrongly denied him a public defender, subjected him to excessive bail and

1 punishment, and, generally speaking, denied him due process and equal protection of the law.
2 *Id.*, p. 3. He alleges that these violations of his constitutional rights occurred in the context of
3 three Island County Superior Court cases: Cause Nos. 97-3-00139-9, 03-1-00133-4, and 07-1-
4 00217-1, (*id.*, p. 5). He alleges that Mr. Mason and Prosecutor Banks conspired to deny him a
5 public defender in 2008. *Id.*, p. 4; p. 6. He also alleges that Judge Churchill should not have
6 presided over his 1997 divorce because she had a conflict of interest because Ms. Morse worked
7 in the Prosecuting Attorney's Office. Dkt. 5 (Redaction to Complaint), pp. 4–5.

8 Mr. Gnehm claims damages of \$30,000, stemming from “huge financial loss [sic]
9 retaining private counsel.” Dkt. 4, p. 4.) Additionally, Mr. Gnehm asks this Court to make
10 Defendants “stop all physical and physiological abuse.” *Id.*

11 Mr. Gnehm does not allege that any of the conduct giving rise to his claims occurred after
12 2008. His divorce occurred in 1997. Dkt. 5, pp. 4–5. Judge Churchill entered the protective order
13 preventing him from seeing his daughter in 2003. Dkt. 4-2, p. 1. Mr. Gnehm claims that he was
14 wrongly prosecuted for violating protective orders in 2003 and 2007. Dkt. 4-2, p. 2. He claims
15 that Mr. Mason and Prosecutor Banks wrongly denied him a public defender in 2008. Dkt. 4-2,
16 p. 6.

17 SUMMARY JUDGMENT

18 The Court shall grant summary judgment if no genuine issue of material fact exists and
19 the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (2010). In
20 support of a motion for summary judgment, the moving party need not negate the opponent's
21 claim, *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); rather, the moving party will be
22 entitled to judgment if the evidence is not sufficient for a jury to return a verdict in favor of the
23 opponent, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). When the record taken as a

1 whole could not lead a rational trier of fact to find for the non-moving party, summary judgment
2 is warranted. *See Beard v. Banks*, 548 U.S. 521, 529 (2006).

3 The moving party bears the burden of showing that there is no evidence which supports
4 an element essential to the non-movant's claim. *Celotex*, 477 U.S. 322. In order to defeat a
5 motion for summary judgment, the non-moving party must make more than conclusory
6 allegations, speculations or argumentative assertions that material facts are in dispute. *Wallis v.*
7 *JR Simplot Co.*, 26 F.3d 885, 890 (9th Cir. 1994).

8 DISCUSSION

9 Under 42 U.S.C. § 1983 “[e]very person who, under color of any statute, ordinance,
10 regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or
11 causes to be subjected, any citizen of the United States or other person within the jurisdiction
12 thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and
13 laws, shall be liable to the party injured in an action at law....” To prevail on a § 1983 claim, a
14 plaintiff must show that some person acting under color of law deprived him or her of a federal
15 constitutional or statutory right. *Monroe v. Pape*, 365 U.S. 167, 172–87 (1961); *Lutheran Day*
16 *Care v. Snohomish County*, 119 Wn.2d 91, 117, 829 P.2d 746 (1992).

17 Mr. Gnehm's complaint is based on conduct which Defendants allegedly engaged in
18 while acting in their capacities as elected officials and county officials, *i.e.*, under the color of
19 law. For example, he alleges: Mr. Mason and Prosecutor Banks successfully conspired to deny
20 him a public defender in 2008 (Dkt. 4, pp. 3–4; Dkt. 4-2, p. 6); Judge Churchill subjected him to
21 excessive bail and punishment (Dkt. 4, p. 3); the 1998 Order and 2002 Order entered in his 1997
22 divorce are invalid because Judge Churchill had a disqualifying conflict of interest (Dkt. 5, pp.
23 4–5); and each Defendant used their power as a County official to deny him due process and

1 equal protection of the law (Dkt. 4, p. 3). Accordingly, Mr. Gnehm's claims are treated as claims
2 under § 1983 claim. *See Monroe*, 365 U.S. at 172–87.

3 Section 1983 claims are subject to the forum state's "statute of limitations for personal
4 injury torts." *Elliot v. City of Union City*, 25 F.3d 800, 802 (9th Cir. 1994). In Washington,
5 personal injury tort claims must be brought within three years of accrual. RCW 4.16.080(2). As a
6 result, § 1983 claims, like personal injury tort claims, must be brought within three years of
7 accrual. *Boston v. Kitsap Cty.*, 852 F.3d 1182, 1185 (9th Cir. 2017) (applying RCW 4.16.080(2)
8 to federal civil rights claims). A § 1983 claim accrues when the plaintiff "knows or has reason to
9 know of the injury which is the basis of the action." *See Norco Construction, Inc. v. King*
10 *County*, 801 F.2d 1143, 1145 (9th Cir.1986) (internal quotations and citations omitted).

11 All of Mr. Gnehm's § 1983 claims accrued by 2008 because he knew of all of the alleged
12 conduct underlying his claims at the time the alleged conduct occurred and the last of that
13 alleged conduct occurred in 2008. The last instance of wrongful conduct alleged by Mr. Gnehm
14 was the alleged conspiracy between Mr. Mason and Prosecutor Banks, sometime in 2008, to
15 deny Mr. Gnehm access to a public defender. Dkt. 4-2, p. 6. Therefore, Mr. Gnehm's claims had
16 all accrued by 2008 because he should have known of his injuries by that time. *See Norco*
17 *Construction*, 801 F.2d at 1145 Indeed, Mr. Gnehm actively participated in each of the civil and
18 criminal matters in which he claims Defendants violated his constitutional rights and was
19 represented by counsel during his 2003 and 2007 criminal prosecutions. *See* Dkt. 26, Fobes
20 Decl., Exs. N, O, R, and S. Therefore, the three-year limitations period for those claims expired
21 no later than 2011. *See Boston*, 852 F.3d at 1185. Nevertheless, Mr. Gnehm waited until 2018 to
22 bring his claims. Dkt. 4.

1 **CONCLUSION**

2 Based on the foregoing, the undersigned concludes that Plaintiff Peter Gnehm has known
3 about all of the alleged conduct giving rise to his § 1983 claims against Defendants Judge Vickie
4 Churchill, Prosecutor Greg Banks, and Don Mason since 2008. He had until 2011 to bring those
5 claims, yet he waited until 2018 to do so. His claims are barred by Washington's three-year
6 statute of limitations for § 1983 claims and there is no justification for Mr. Gnehm's failure to
7 bring his claims within the limitations period. Accordingly, Defendants motion for summary
8 judgment (Dkt. 25) is **GRANTED** and Plaintiff's claims against Defendants are **dismissed with**
9 **prejudice.**

10 DATED this 25th day of February, 2019.

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13 BRIAN A. TSUCHIDA
14 Chief United States Magistrate Judge
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